



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Caswell International Corp.

File: B-233679

Date: March 21, 1989

DIGEST

Where a bid is subject to two interpretations, under only one of which it would be low, it is ambiguous and must be rejected.

DECISION

Caswell International Corp. protests the rejection of its bid as nonresponsive, and the subsequent award of a contract to Polytronic-ABA, Inc., under invitation for bids (IFB) No. DAKF03-88-B-0024, issued by the Department of the Army for a combat target system. Caswell contends that its bid was responsive and offered the low evaluated price.

We deny the protest in part and dismiss it in part.

The solicitation sought bids to supply the Polytronic-ABA TG-92 combat target system, or equal. Three bids were received by bid opening. Polytronic-ABA offered its own foreign-made, brand-name product, for the apparent low price of \$77,796.08; Caswell offered an "equal" American-made product at \$108,113.03; the third bidder was found to be nonresponsive. Application of a 12-percent Buy American Act differential factor to Polytronic-ABA's bid increased its bid price to \$87,131.61, but since this still was lower than Caswell's evaluated bid price, award was made to Polytronic-ABA as the low, responsive bidder.

Caswell initially protested to the contracting agency that its bid price totaled only \$83,113, not the \$108,113.03 the agency arrived at in evaluating the bid. This discrepancy resulted from Caswell's bid for item No. 0001 on the bid schedule, which called for 17 brand name radio receivers (a system component), or equal. Caswell bid \$2,500 as its unit price, but did not list an extended price for all 17 receivers; instead, Caswell circled the "17" in the quantity column, drew a line extending from the circle, and wrote "minimum required is 7 ea." next to the line.

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The agency interpreted Caswell's entry, not as an offer of a reduced quantity, but as a statement of the minimum number of receivers the government could buy under the contract. The agency proceeded to calculate Caswell's bid as offering the specified 17 receivers at \$2,500 each, for a total of \$42,500 for line item No. 0001. Caswell, on the other hand, argued that, based on its bid notation, it had offered only 7 receivers at \$2,500 each, for a total of only \$17,500 for item No.1; using this interpretation, Caswell's bid would be low. The Army denied Caswell's protest on the basis that its bid was nonresponsive and should have been rejected because it was ambiguous with respect to the quantity offered under item No. 0001.

Caswell reiterates its prior arguments in its protest to our Office, and further contends that, to the extent that there was any deficiency in its bid, this should have been remedied through negotiations after bid opening; the IFB failed to clearly define the agency's minimum needs; and the IFB should have been issued as a request for proposals (which would have permitted negotiations).

In general, to be responsive, a bid must be an unequivocal offer to perform without exception the exact thing called for in the solicitation so that upon acceptance the contractor will be bound to perform in accordance with all of the invitation's material terms and conditions, see Spectrum Communications, B-220805, Jan. 15, 1986, 86-1 CPD ¶ 49; if any substantial doubt exists as to whether a bidder, upon award, could be required to supply each item specified in an IFB, the integrity of the competitive bidding system requires rejection of the bid as nonresponsive. CCL, Inc., B-228094.2 et al., Feb. 9, 1988, 88-1 CPD ¶ 126.

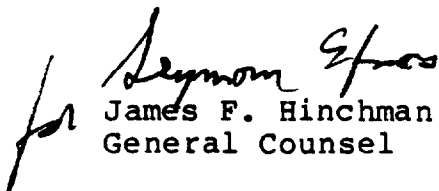
We agree with the agency that Caswell's bid was at best unclear with respect to the number of radio receivers it was offering. Even if Caswell did intend to offer only 7 receivers for item No. 0001, its failure to cross out the preprinted quantity of 17, together with the absence of a total extended price in the space provided, left its bid patently unclear as to quantity for this item, and thus reasonably susceptible of the interpretation that Caswell was offering 17, not 7, radio receivers at the indicated unit price of \$2,500 each. At this price and quantity, Caswell's bid would not be low. Since the bid would not be low under this reasonable interpretation, the agency was required to reject it as ambiguous.

In any case, even if we agreed that the bid clearly offered seven receivers at \$2,500 each, the bid would be unacceptable, since Caswell's proposed system, under the interpretation, would not conform to the salient characteristics. In this regard, the solicitation required that the offered system possess an operational capacity of 75 to 120 combat targets that can be used with radio control. Both in its bid cover letter and in the accompanying descriptive literature, Caswell indicated that each of its offered radio receivers could operate up to six targets. It thus appears Caswell would have had to offer at least 13 of its receivers to provide the required minimum system capacity of 75 radio control combat targets. A bid offering an "equal" item is nonresponsive where, as here, the required descriptive literature, or other information reasonably available to the agency, does not show compliance with all salient characteristics. See Mid-Florida Corp., B-228372, Jan. 22, 1988, 88-1 CPD ¶ 60.

With respect to Caswell's contention that any deficiency in its bid could have been corrected after bid opening, we point out that a bid that is nonresponsive may not be made responsive after bid opening because the bidder would have the competitive advantage of choosing to accept or reject the contract after bids are exposed. Avantek, Inc., B-219622, Aug. 8, 1985, 85-2 CPD ¶ 150.

To the extent that Caswell now argues for the first time that the solicitation requirements were unclear and questions why the solicitation was not issued as an RFP, the protest is untimely. Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1988), provide that protests based on alleged improprieties in a solicitation that are apparent prior to bid opening must be filed prior to that time. Since Caswell failed to raise these issues prior to bid opening, they are untimely. See Fluid Systems, Inc., B-225880, Jan. 6, 1987, 87-1 CPD ¶ 20.

The protest is denied in part and dismissed in part .


James F. Hinchman
General Counsel